UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
Charlottesville Division

ELIZABETH SINES, SETH WISPELWEY, MARISSA BLAIR, TYLER MAGILL, APRIL MUNIZ, HANNAH PEARCE, MARCUS MARTIN, JOHN DOE, JANE DOE 1, JANE DOE 2, and JANE DOE 3,

Plaintiffs,

v.

JASON KESSLER, RICHARD SPENCER, CHRISTOPHER CANTWELL, JAMES ALEX FIELDS, JR., VANGUARD AMERICA, ANDREW ANGLIN, MOONBASE HOLDINGS, LLC, ROBERT "AZZMADOR" RAY, NATHAN DAMIGO, ELLIOT KLINE a/k/a/ ELI MOSELY, IDENTITY EVROPA, MATTHEW HEIMBACH, MATTHEW PARROTT a/k/a DAVID MATTHEW PARROTT, TRADITIONALIST WORKER PARTY, MICHAEL HILL, MICHAEL TUBBS, LEAGUE OF THE SOUTH, JEFF SCHOEP, NATIONAL SOCIALIST MOVEMENT, NATIONALIST FRONT, AUGUSTUS SOL INVICTUS, FRATERNAL ORDER OF THE ALT-KNIGHTS, MICHAEL "ENOCH" PEINOVICH, LOYAL WHITE KNIGHTS OF THE KU KLUX KLAN, and EAST COAST KNIGHTS OF THE KU KLUX KLAN a/k/a EAST COAST KNIGHTS OF THE TRUE INVISIBLE EMPIRE,

Defendants.

Civil Action No. 3:17-cv-00072-NKM

JURY TRIAL DEMANDED

REPLY IN SUPPORT OF
MOTION TO PROCEED UNDER PSEUDONYMS

INTRODUCTION

Plaintiffs and their counsel have received threats of "major damage" and "an eye for an eye" for filing this case. Not surprisingly then, no Defendants opposed the Doe Plaintiffs' Motion to Proceed Under Pseudonyms ("Motion") until Defendant Fields -- who is awaiting trial for the murder of one of Plaintiffs' fellow counter-protesters -- demanded the Doe Plaintiffs reveal themselves publicly. Fields' (untimely) Opposition to the Motion, however, is comprised of nothing more than conclusory arguments that fly in the face of the law and facts. The applicable legal standard only requires a Doe Plaintiff show there is a "risk" he "may" suffer retaliation. Fields fails to rebut the substantial evidence that Defendants engaged in and promoted violence against Plaintiffs (including that Fields himself murdered a peaceful protester), and just dismisses these well-documented facts out of hand. And, despite that Plaintiffs and their counsel have *already* been threatened after filing this lawsuit, nowhere in Fields' Opposition does he even pretend he will not disseminate the identities of the Doe Plaintiffs if he were to learn of them.

His main argument -- that he will not be able to take the discovery he needs -- is entirely unfounded. He will of course be able to take discovery of John Doe to the same extent as any other Plaintiff. [1]

Accordingly, in the event the Court does not strike Fields' Opposition as untimely (DE 164), it should nevertheless reject it as without merit, and the Court should grant the Motion.

ARGUMENT

Fields' Opposition makes several arguments, none of which are persuasive.

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[1] Subsequent to the filing of Fields' Opposition, the three Jane Does decided to withdraw as Plaintiffs from the lawsuit, leaving this Motion applicable solely to John Doe. The arguments in the Motion and in this Reply remain fully applicable to John Doe.

First, Fields argues the Motion rests only on "unsupported accusations" that Defendants intentionally caused violence in Charlottesville. DE 162, p. 2. Fields wholly ignores reality. Indeed, this argument rings particularly hollow coming from Fields because he is charged with murder, malicious wounding with intent to maim, and hit and run in connection with the events in Charlottesville on August 11 and 12. *Exhibit 1*.[2] Similarly, Defendant Cantwell was charged with releasing chemicals designed to cause bodily injury. *Exhibit 2*. And both the Complaint and the Declarations the Doe Plaintiffs submitted with their Motion detail the other threats and violence Plaintiffs suffered at the hands of Defendants and their supporters. DE 1, ¶¶ 21-45; DE 98-2; DE 98-3; DE 98-4; DE 98-5.[3] John Doe's concerns are solidly supported, and then some.

Second, Fields argues Plaintiffs' claim that Defendants incited violence is "without support." DE 162, p. 4. Putting aside that Defendants *actually committed* violence against Plaintiffs and other counter-protesters as explained above, Fields again contradicts the facts. The Motion details many examples of Defendants explicitly calling for and praising violence against Plaintiffs, including saying they are "proud" of Fields murdering "one nigger-lover named Heather Heyer," saying "let's fucking gas the kikes and have a race war," and "[g]as the kikes, race war now!" and calling for "ethnic cleansing." DE 98, p. 3; *see e.g.*, *Exhibit 3*.

Third, Fields concedes "the balance of allegations" are that the Plaintiffs risk retaliation because of their "past encounters" with Defendants. DE 162, p. 4. This shows exactly why the Court should *grant* the Motion, because past threats or harm by defendants are alone sufficient to

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[2] The Court may take judicial notice of the indictment. *United States v. Kane*, 434 Fed. App'x 175, 176 (4th Cir. 2011).

[3] Strangely, Fields argues the Court should require the Doe Plaintiffs to support their Motion "by affidavits." DE 162, p. 2. That is exactly what they did. *See* DE 98-2; DE 98-3; DE 98-4; DE 98-5.

proceed anonymously. *See* DE 98, p. 10 (citing cases). Here, Fields contradicts his own argument, as he explains "Plaintiffs are in danger" only if they make "the personal decision to attend another political rally involving Defendants." DE 162, p. 4. Thus, Fields concedes that people who oppose Defendants' views, like John Doe, are "in danger." This alone is sufficient to allow John Doe to proceed anonymously.

Moreover, Fields ignores the legal standard. John Doe does not have to prove he will suffer retaliation. Rather, the Court will allow him to proceed anonymously if there is a "*risk*" or the "*potential*" for retaliation, because it is enough that he "*may* be" harmed or harassed. *Int'l Refugee Assistance Project v. Trump*, 2017 WL 818255, at *1-2 (D. Md. 2017) (emphasis added) (allowing plaintiffs to proceed under pseudonyms where there was a risk they would suffer harm if their identities were disclosed); *Does I thru XXIII v. Advanced Textile Corp.*, 214 F.3d 1058, 1071 (9th Cir. 2000) (explaining it is enough if plaintiffs "fear" retaliation, and they "do *not* need to prove that they face a danger of physical injury"); *see also* DE 98, p. 10 (citing cases).

Fourth, Fields argues there is no evidence Defendants will publicize the identity of John Doe. DE 162, p. 4. Again, this ignores the facts. The Motion details how Defendants disseminate the identities -- and even the home addresses -- of people who oppose them and tell supporters to "shank them."[4] DE 98, p. 4. And, if there were still any doubt, after this lawsuit was filed Integrity First for America, which publicly announced it is helping to fund this litigation, received the following anonymous message promising "major damage" and "an eye for an eye" against the Plaintiffs and their lawyers:

> Message to the Jews trying to sue the Alt-Right with this frivolous lawsuit. If any Alt-Right Gentiles are socio-economically damaged by this lawsuit it will mean damage brought upon Jews. An eye for an eye. Mark my words. You've been

[4] "Shank" means to "slash or stab (someone), especially with a makeshift knife." *Shank*, English Oxford Living Dictionaries.

> warned. White people protesting for their rights/interests in public spaces is protected by the Constitution. You are evil. Plain and simple. You will not stop us. Never. The Jewish law firm bringing this lawsuit will cause major damage being brought upon Jews. You can not [sic] silence us. We're not going away. All you will accomplish is to grow the Alt-Right and make more White People hate Jews. You will never break us. Our cause is just and righteous. We will continue to invade your public spaces and speak the truth. You will lose. Guaranteed.

Exhibit 4.

It does not matter that some of the Plaintiffs have chosen to reveal their identities, and one has sought to remain anonymous. The fact that certain Plaintiffs accept the risk of retaliation does not mean that risk should be forced upon John Doe. The Court should not require him to publicly reveal himself and risk the zealous supporters of neo-Nazi murderers making good on these threats.

Fifth, Fields claims he will suffer prejudice because he "must be permitted to conduct discovery." DE 162, pp. 4-5. But Fields never explains why John Doe proceeding under a pseudonym would prevent this. Plaintiffs agreed to negotiate an appropriate protective order with defense counsel so they could disclose John Doe's identity and documents containing identifying information as "attorney's eyes only." DE 98, p. 13. That is sufficient to prevent any prejudice to Fields. *E.g., Doe v. Barrow County, Ga.*, 219 F.R.D. 189, 194 (N.D. Ga. 2003) (allowing plaintiff to proceed anonymously where her identity would be revealed to the court and counsel for the defense). And, the Court routinely enters similar orders to guard against the disclosure of sensitive information to persons other than counsel or the court. *E.g., Parker Compound Bows, Inc. v. Hunter's Mfg. Co., Inc.*, 2014 WL 12462305, at *1 (W.D. Va. 2014); *McAirlaids, Inc. v. Kimberly-Clark Corp.*, 299 F.R.D. 498, 500 (W.D. Va. 2014). Nothing will prevent Fields from obtaining the discovery to which he is entitled. Fields just ignores this.

CONCLUSION

For the foregoing reasons, the Court should grant the Motion.

Dated: January 4, 2018

Respectfully submitted,

s/ Robert T. Cahill

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CERTIFICATE OF SERVICE

I hereby certify that on January 4, 2018, I filed the foregoing with the Clerk of Court through the CM/ECF system, which will send a notice of electronic filing to:

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I further hereby certify that on January 4, 2018, I also served the following non-ECF participants, via U.S. mail, First Class and postage prepaid, addressed as follows:

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